

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

**Jerry L. Ivery
Jacqueline D. Ivery**

*

Plaintiff,

*

-vs.-

*

No.

Ameriquet Mortgage Company

*

Defendant.

*

**COMPLAINT FOR DAMAGES AND
PETITION FOR TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE JUDGES OF THE FEDERAL DISTRICT COURT

Comes now your Plaintiff and would state and show unto the court as follows:

NATURE OF THE CASE

1. This is an action for damages and equitable relief, arising under the Truth In Lending Act 15 U.S.C. § 1601 et seq. and Regulation Z which implements the Truth In Lending Act 12 C.F.R. § 226 et seq. Specifically among others, the Defendant violated these provisions by failing to provide information to the borrower, by providing contradictory and confusing information to the Borrower. Defendant also fraudulently concealed their violations. Additionally, this action includes claims under Federal and Tennessee Law, including without limitation,

the Truth In Lending Act, the Real Estate Settlement Procedures Act, The Tennessee Consumer Protection Act, fraud, negligent representation, breach of fiduciary duty ,breach of contract . All aforementioned acts constitute predatory lending.

JURISDICTION

2. This action is brought pursuant to the provisions of the Truth In Lending Act 15 U.S.C. §1601 et. Seq. and the Real Estate Settlement Procedures Act 15 U.S.C. §. Jurisdiction is conferred upon this court by 18 U.S.C.§ 1331 with resulting supplemental jurisdiction over Plaintiff's state law claims pursuant to 18 U.S C.§ 1367.

VENUE

3. Venue is proper in this District pursuant to 18 U.S.C.1391(b) in that Plaintiff and Defendant reside or do business in this District and/or a substantial part if not all of the events or omissions giving rise to the claim occurred in this District.Venue is also proper in this District pursuant to 18 U.S,C.§ 1963(a) in that all parties reside are found, have an agent and or transact his/her/its affairs in this district.

PARTIES

- 4.Jerry Ivery and Jacqueline Ivery are resident citizens of Memphis, Shelby County, Tennessee.
5. Defendant Ameriquest Mortgage Company hereinafter(Ameriquest) is a Delaware Corporation authorized to do business in the state of Tennessee with its principle place of business at 1100 Town & Country Road, Suite 1100 Orange CA. 92060 which may be

served with process through its registered agent ' National Registered Agents, Inc. 1900 Church Street Suite 400 Nashville, Tennessee 37203.

FACTUAL STATEMENT

6. On June 18, 2004 Rev Ivery and Mrs. Ivery attended a closing of a loan to refinance the Real Property municipally known as 1979 South Parkway East in Memphis, Tennessee. on Ameriquest Loan Number 0080872088. Rev. and Mrs. Ivery had been told they would be receiving a fixed rate mortgage loan from Ameriquest. Mr. and Mrs. Ivery never received copies of the documents signed on June 18, 2004. In 2006, Rev.. and Mrs. Ivery were informed their monthly note was increasing because they had an adjustable rate loan. Because of the adjustable rate mortgage,. Mr. and Mrs. Ivery subsequently became delinquent in their payments because of the higher monthly note resulting from the adjustable rate and are now facing the impending foreclosure of their property at 1979 South Parkway. The foreclosure sale is set for 12:00 noon September 14, 2007 on the steps of the Shelby County Courthouse in Memphis Shelby County, Tennessee. Rev. and Mrs. Ivery never received a copy of the documents they signed at closing and they had been informed by representatives of Ameriquest that they were receiving a fixed rate mortgage and not an adjustable rate mortgage. As a result of the deception, they are now facing the loss of their home.

VIOLATION OF R.E.S.P.A.

7. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint and allege that the Defendant has violated the provisions of the Real Estate Settlement Procedures Act 12 U.S.C.§ 1601 and Regulation x which implements R.E.S.P.A. 24 C.F.R. § 3500

VIOLATION OF THW TENNESSEE CONSUMER PROTECTION ACT

8. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint and allege that in committing the enumerated acts complained of, the Defendant has engaged in fraudulent and/or deceptive business practices / transactions and have thereby violated the provisions of the Tennessee Consumer Protection Act T.C.A. § 47-18-101 et. Seq. resulting in damages to Plaintiffs Mr. . and Mrs. Ivery. .

FRAUD

9. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint and allege that in committing the enumerated acts complained of, Defendant made false representations of existing or past material facts, that such false representations were made knowingly without belief in their truth or recklessly and that the Iverys reasonably relied upon them and thereby suffered damages as a result of such reliance..

The fraud of the Defendant is evident in the settlement statement and closing documents. The Iverys innocently relied on the misrepresentations and refinanced the property to their detriment.

Had Mr. and Mrs. Ivery known the truth about the terms and conditions of the loan and the adjustable rate provision, they would not have entered into the agreement.

NEGLIGENT MISREPRESENTATION

10. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint and allege that the Defendant had a duty of due care to Mr. and Mrs. Ivery and that the Defendant breached such duty to the Iverys by omitting or misrepresenting material information to the Iverys. The negligent misrepresentation by Defendantt and its agents and representatives was the proximate cause of damages suffered by the Iverys.

11. The Defendant was acting in the course of business or in transactions involving pecuniary interest.

12. The Defendant provided faulty information to the Iverys concerning the nature of the rate of interest on the loan, which information was meant to guide the Iverys through the transaction.

13. The Defendant failed to exercise reasonable care in obtaining and communicating information.

14. Rev. Ivery and Mrs. Ivery justifiably relied on the faulty information from the Defendant and refinanced their home on the basis of that information to their detriment.

BREACH OF CONTRACT

Plaintiff incorporates by reference the preceding paragraphs of this Complaint and allege that the Defendant had a contractual relationship with the Iverys either directly or implicitly , that Defendant, either directly or through agents breached such contract with the Iverys and that the breach of such contract was the proximate cause of damages suffered by the Iverys.

BREACH OF DUTY OF GOOD FAITH

Plaintiff incorporates the preceding paragraphs of this Complaint and allege that the Defendant had a duty of good faith and fair dealing with the Iverys and that Defendant breached such duty of good faith either directly or through agents.and such breach by Defendant was the proximate cause if damages suffered by the Iverys.

WHEREFORE PREMISES CONSIDERED

1. That process issue and be served upon Ameriquest
2. That this honorable court would issue a restraining order prohibiting the sale of the real property at 1979 South Parkway East pending a hearing and determination of this matter on the merits.
3. After a hearing, enter a permanent injunction enjoining the Defendants from transferring any interest in selling the real property at 1979 South Parkway East .
4. That Plaintiffs be granted a judgment for injunctive relief and monetary damages in the amount to be proven at trial against Defendant.
5. That Plaintiff be awarded treble damages pursuant to the Tennessee Consumer Protection Act .
6. That Plaintiff be awarded actual and statutory damages against the Defendant for violation of the Truth In Lending Act. And Regulation Z.
7. That Plaintiff be awarded actual and treble damages against the Defendant for violations of RESPA and Regulation X.
8. In the alternative to treble damages that punitive damages be awarded in an amount to be proven at trial..
9. All such other and further relief as the court deems appropriate.

Respectfully Submitted

/s Paul A. Robinson Jr.

Paul A. Robinson Jr. 014464
35 Union Ave. Ste. 101
Memphis, Tennessee 38103
(901) 525-2833

I hereby affirm that the facts stated in the foregoing Petition are true to the best of my knowledge information and belief.

/s Jerry L. Ivery

Jerry L. Ivery

September 8, 2007

Date

Sworn to and subscribed before me this 8th day of September 2007.

Vivian J. Flowers

Notary Public

My Commission Expires: May 13, 2009

/s Jacqueline D. Ivery

Jacqueline D. Ivery

September 8, 2007

Date

Sworn to and subscribed before me this _____ day of September 2007.

Vivian J. Flowers

Notary Public

My Commission Expires: May 13, 2009

FIAT

TO THE CLERK:

**ISSUE THE TRO/INJUNCTION AS PRAYED FOR IN THE COMPLAINT AND SET
THE HEARING FOR A PERMANENT INJUNCTION ON
_____ 2007.**

JUDGE

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jerry Ivery, Jacqueline Ivery

(b) County of Residence of First Listed Plaintiff Shelby
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Paul Robinson 94 S. Main Memphis, TN. 38103

DEFENDANTS

Ameriquet Mortgage

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**Aaron Squires
Wilson & Associates**

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

- | | | | | | |
|--|--|--|--|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Truth In Lending Act

Brief description of cause: **Bank Fraud**

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Paul A. Robinson Jr.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

JERRY IVERY
et al

v.

AMENQUEST
MORTGAGE

J. DANIEL BREEN

JERRY IVERY
et al

AMENQUEST
MORTGAGE

DIANE K. VESCOVO